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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/876,046	06/07/2001	Dwip N. Banerjee	AUS920010445US1	9020

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EXAMINER

O'CONNOR, GERALD J

ART UNIT PAPER NUMBER

3627

DATE MAILED: 12/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/876,046

Applicant(s)

Banerjee et al.

Examiner

O'Connor

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on May 2, 2005 (arguments) and June 27, 2005 (amendment).
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 14-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on June 7, 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Preliminary Remarks*

1. This Office action responds to the amendment filed by applicant on June 27, 2005 and to the arguments filed by applicant on May 2, 2005, both in reply to the previous Office action on the merits, mailed February 11, 2005.

2. The amendment of claim 1 by applicant in the reply filed June 27, 2005 is hereby acknowledged.

### *Election/Restriction*

3. Claims 14-40 continue to stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a non-elected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed October 8, 2004.

### *Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

5. Claims 1, 2, and 8-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Izumi (JP 08055161).

Izumi discloses a method for processing information related to sales of a food product, said food product including a number of ingredients, said method comprising: determining a number of said food products which have been scheduled to be prepared for sale during a predetermined period of time; and, accessing a database within a computer system to determine a reference number of said food products which have been sold during a corresponding past period of time.

Regarding claim 2, the method of Izumi includes adjusting said number of food products scheduled for preparation in accordance with said referenced number.

Regarding claim 8, the method of Izumi includes maintaining a record of current inventory levels of said ingredients.

Regarding claim 9, the method of Izumi includes determining an occurrence of a sale of one of said food products; and adjusting an inventory level of one or more ingredients comprising said food product in response to said sale.

Regarding claim 10, the method of Izumi includes providing notice of low inventory levels when said inventory levels fall below a predetermined reference level.

Regarding claim 11, the method of Izumi includes automatically ordering amounts of said one or more ingredients when said inventory levels for said one or more ingredients falls below said reference levels.

Regarding claim 12, the method of Izumi includes accomplishing said ordering by sending an electronically generated message to a supplier of said one or more ingredients.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3-7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Izumi (JP 08055161).

Izumi discloses a method for processing information related to sales of a food product, as applied above in the rejection of claims 1, 2, and 8-12 under 35 U.S.C. 102(b), but the method of Izumi does not explicitly include that the database includes information related to a stated reason for said reference number, the information being presented on a display device.

However, it is well known, hence obvious, to modify a sales forecast when a reason exists for the modification, and official notice to that effect is hereby taken. See MPEP § 2144.03. For example, say a restaurant would normally expect to sell 100 meals on a particular day of the week in a particular month. If, however, one year that particular day of the week happened to coincide with the 14th day of the month, and the month was February, one of ordinary skill in the art would recognize that far more meals would be sold that night than otherwise would be expected, the reason for the far greater sales being Valentine's Day, a particularly busy night for restaurants, and the reason of it being Valentine's Day would be indicated on a display device, that being a Calendar.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the method of Izumi so as to provide that the database would include information related to a stated reason for said reference number, the information being presented on a display device, as is all well known to do, in order to accommodate anticipated predictable fluctuations in the forecast due to external events such as holidays, and since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

Regarding claims 5-7, the method of Izumi does not include that the food products which have been prepared for sale are placed in predetermined holding locations pending an order for a sale, the number of said food products which are available for sale being determined by product detecting means, wherein said product detecting means is either a light sensing device or a

weight sensing device. However, placing food in a holding area once it has been prepared for sale, and product quantity detectors based on either of a beam of light or a weight of the product(s), are well known, hence obvious, to those of ordinary skill in the art, particularly with respect to vending machines, and official notice to that effect is hereby taken. See MPEP § 2144.03. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the method of Izumi so as to include a storing prepared food items in a storage area, the storage area including a detector based on either of a beam of light or the weight of the products, as is well known to do, in order to accommodate a surge in sales such as occurs in the restaurant business at peak times such as the lunch hour rush, and to know at any moment how many prepared items were remaining “on-deck,” ready to be sold, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

Regarding claim 13, the method of Izumi does not include that the electronically generated message is an e-mail sent from a restaurant server system to a supplier server system. However, e-mail is certainly a well known, hence obvious, form of electronically generated message to send, and official notice to that effect is hereby taken. See MPEP § 2144.03. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the method of Izumi so as to have the electronically generated message be sent in the form of an e-mail message sent from the server at the restaurant to the server at the supplier, as is well known to do, merely as a matter of design choice as a ready and

convenient form/means of electronic message to use, and since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

***Response to Arguments***

8. Applicant's arguments filed May 2, 2005 have been fully considered but are not persuasive.

9. Regarding the argument that the method of Izumi somehow pertains only to raw ingredients, not to finished food products, the method of Izumi clearly pertains to both, just as the instant claims do, since there exists absolute proportional correlation between the two. In other words, if someone wants to prepare 100 hamburgers for sale, they better have at least 100 hamburger patties in the refrigerator. Beyond that, many "food products" are sold in a raw state (i.e., they require no cooking or other preparation). These would include pieces of fruit, such as apples or bananas, but would also include bottled or canned drinks, including single-serving cartons of milk. Lastly, the language of applicant's own claims explicitly states that applicant's food products include "a number of ingredients." Therefore, any attempt by applicant to argue that these two things are somehow unrelated in the instant invention could only be characterized as disingenuous, at best.



10. Regarding the argument that the method of Izumi is unrelated to any time period, the method of Izumi is indeed related to a particular time period. See, for example, in the English language abstract, which states that the purpose of the method is, “to eliminate the loss from spoilage” (line 1), which is accomplished by, “consumption [being] predicted from the *actual result in the past* and experience for the production amount of a menu *of the day*” (lines 2-4, with emphasis added). Therefore, Izumi clearly is predicting consumption for a given day, based on his past experience.

11. Regarding the argument that the examiner’s conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant’s disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

12. Regarding the argument that whether or not something can be performed by one of ordinary skill in the art without undue experimentation is the test for adequacy or sufficiency of disclosure under 35 U.S.C. 112 and not for obviousness under 35 U.S.C. 103, it is indeed one of the tests for adequacy or sufficiency of disclosure under 35 U.S.C. 112. However, in addition to

that, it is well settled that the main test for the tenability of any conclusion of obviousness with respect to any proposed or hypothetical combination or modification of prior art knowledge is whether or not such a combination or modification could have been performed or implemented by any person of ordinary skill in the art, at the time of the invention, with neither undue experimentation, nor risk of unexpected results. See *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097, 231 USPQ 375, 379.

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to the disclosure.

14. Applicant's amendment necessitated any new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

15. Any inquiry concerning this communication, or earlier communications, should be directed to the examiner, **Jerry O'Connor**, whose telephone number is **(571) 272-6787**, and whose facsimile number is **(571) 273-6787**.

The examiner can normally be reached weekdays from 9:30 to 6:00.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Mr. Alexander Kalinowski, can be reached at **(571) 272-6771**.

Official replies to this Office action may be submitted by any *one* of fax, mail, or hand delivery. **Faxed replies are preferred and should be directed to (571) 273-8300**. Mailed replies should be addressed to "Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450." Hand delivered replies should be delivered to the "Customer Service Window, Randolph Building, 401 Dulany Street, Alexandria, VA 22314."

GJOC

December 15, 2005

 12/15/05

Gerald J. O'Connor

Primary Examiner

Group Art Unit 3627